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SUMMARY RECORD OF THE 1301st MEETING

Held at Headquarters, New York,
on Friday, 25 March 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 27 of the Covenant (continued) (CCPR/C/49/CRP.1 and CCPR/C/50/CRP.1)

1. The CHAIRMAN said that document CCPR/C/50/CRP.1 contained amended paragraphs 1 to 6.1 of the draft general comment on article 27 of the Covenant, which the Committee had adopted at its 1294th and 1295th meetings. He then invited members to consider paragraph 6.2, as redrafted by Mrs. Evatt and Mr. Pocar, and paragraphs 7 and 8, which were contained in document CCPR/C/49/CRP.1.

Paragraph 6.2

2. Mr. LALLAH noted that the first sentence stated that the individual rights protected under article 27 depended to some extent on the ability of the minority or group to maintain its culture, language or religion. He suggested deleting the phrase "to some extent".

3. Mr. EL-SHAFEI objected that the burden would thus be put entirely on the minority itself, whereas the language of article 27 was very clear on the question of protection.

4. Mrs. HIGGINS suggested that the phrase "to some extent" might be replaced by the phrase "in turn" to accommodate Mr. El-Shafei's point.

5. It was so decided.

6. Mr. AGUILAR proposed replacing the phrase "minority or group" by the words "minority group".

7. Mr. LALLAH, referring to the second sentence, which read "Positive measures by States may also be necessary to protect the identity of a minority in order to enable persons belonging to it to freely express their characteristics and to develop their culture, language or religion, in community with the other members of the group", proposed replacing the clause "to freely express ... religion" by the clause "to enjoy and develop their culture and language and to practise their religion".

8. Mr. WENNERGREN said that he disliked the vague term "identity" and would [illegible] with the word "characteristics".

[illegible]NDL said that he preferred "identity". He also proposed prefacing [illegible] sentence with the word "Accordingly,".

10. Mr. EL-SHAFEI suggested the word "rights" in place of the word "identity".

11. Mr. LALLAH said that introducing the issue of rights would break the logic of the sentence.

/...

12. Mrs. EVATT concurred with Mr. Lallah, but suggested replacing the clause "in order to enable persons belonging to it" with the phrase "and the rights of its members".

13. Mr. AGUILAR observed that a group's characteristics made up an identity which, for the purposes of article 27, had been defined in terms of its culture, religion and language, and which conferred the necessary specificity on the group. The word "identity" should therefore be retained.

14. It was so decided.

15. The CHAIRMAN said he took it that the Committee wished to adopt the first and second sentences of paragraph 6.2 as just amended and to adopt the third and fourth sentences of the draft submitted by Mrs. Evatt and Mr. Pocar, which read:

> "In this connection, it has to be observed that such positive measures must respect the provisions of articles 2 (1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria."

16. Paragraph 6.2, as amended, was adopted.

Paragraph 7

17. Mrs. HIGGINS said that since culture did not always include a particular way of life, the first sentence should be amended to read "may include".

18. Mr. EL-SHAFEI said that paragraph 7, which defined the nature of the cultural rights protected by article 27, would prove very useful in dealing with communications. However, he wondered whether only land and land resources were associated with a certain pattern of life, and whether traditional activities could be restricted to fishing and hunting.

19. Mr. HERNDL said that the words "that right" in the last sentence should be replaced by the words "those rights" because the reference was to cultural rights in general.

20. Mrs. EVATT, supported by Mr. HERNDL, said she was concerned that minorities should be consulted about decisions which affected them. She therefore proposed adding the phrase "and measures to ensure the effective participation of members of the minority group in decisions affecting them." at the end of the paragraph.

21. Mr. LALLAH suggested that Mrs. Higgins and Mr. El-Shafei's concerns might be accommodated by replacing the clause "it is to be noted ... land resources," with the words "the Committee observes that culture may manifest itself in various forms and may include a particular way of life associated with the use of land resources,". In the second sentence, the phrase "activities of fishing and hunting" should read "activities such as fishing and hunting".

(Mr. Lallah)

22. He also approved of Mr. Herndl's correction and warmly supported Mrs. Evatt's proposed addition, which reflected the Committee's experience in dealing with article 27. In the Omaniyak and Kitok cases referred to in the footnote to paragraph 7, the Governments had, indeed, had extensive consultations with the groups concerned, which had proved very useful.

New paragraph (former paragraph 5.4)

23. Mr. LALLAH recalled that paragraph 5.4 had been deleted except for the last sentence, which was to be placed elsewhere in the draft text. He proposed including that sentence after paragraph 7 as a new paragraph reading: "The Committee observes that none of the rights protected under article 27 of the Covenant may be legitimately exercised in a manner or to an extent inconsistent with the other provisions of the Covenant. 5/" He assumed that the footnote to that paragraph, like the various other footnotes referring to specific cases, would be retained since it enabled States parties and non-governmental organizations to follow the Committee's reasoning.

24. The CHAIRMAN said he took it that the Committee wished to retain all footnotes and to adopt the new paragraph just proposed, for inclusion placing it after paragraph 7.

25. It was so decided.

Paragraph 8

26. Mr. LALLAH said that paragraph 8 stressed that the rights referred to in article 27 were valuable rights in themselves, a point that was often forgotten when the issue of non-discrimination was introduced. The paragraph had been placed at the end of the draft general comment to emphasize that idea.

27. Mrs. CHANET said she shared Mr. Lallah's views and stressed that paragraph 8 should emphasize that those rights should be respected in themselves and not confused with other individual rights. She proposed that the phrase "nevertheless these are valuable rights" should be replaced by "these rights must be guaranteed as such and must not be confused with other individual rights which are already ensured to all individuals". The second and third sentences should be deleted, as they contained unnecessary additional references to cultural identity and weakened the central idea of the paragraph.

28. Mr. SADI proposed that the words "limited nature and scope" should be replaced by the words "specific scope", a more neutral expression that did not have the negative connotation that the word "limited" had. The phrase "limited range of subject areas", should be replaced by the words "particular range of subject areas" for the same reason. He also felt that the phrase "the protection of these rights" should read "the promotion and protection of these rights", in order to emphasize the positive measures to be adopted to promote those rights. Lastly, in the third sentence, the word "special" should be replaced by the word "particular" and the word "already" should be deleted.

29. Mr. NDIAYE said that he objected to the style of paragraph 8 and favoured simplifying the text. Specifically, as the scope of the rights in question had been sufficiently defined in preceding paragraphs, repeated references to the "limited scope" should be deleted. He supported the amendment proposed by Mrs. Chanet.

30. Mrs. HIGGINS said that, to allay States' fears with regard to the granting of minority rights, the first sentence should be amended to read: "Notwithstanding the restricted nature and scope of the rights conferred on the individual by article 27, whether in terms of the specific categories of minority groups to which he belongs or of the particular range of subject areas protected or the protection of those rights only when exercised within the minority groups concerned or else the nature of the obligations on States parties, these are none the less valuable rights." The second sentence might be amended to begin "They enrich the fabric of society as a whole," with Mrs. Chanet's amendment inserted immediately thereafter.

31. Mr. HERNDL supported the proposals made by Mrs. Higgins and Mrs. Chanet: the paragraph should emphasize that the rights in question should be protected as such.

32. Mr. WENNERGREN supported the amendment proposed by Mrs. Higgins but suggested that the word "valuable" in the first sentence should be replaced by the word "important" in order to strengthen the meaning. The third sentence should be reworded to clarify that, while some of the rights referred to in the paragraph were parallel to rights mentioned in other articles (such as the freedom of religion in article 18), they were none the less specific rights in themselves.

33. Mr. EL-SHAFEI said that the word "nevertheless" at the end of the first sentence should be deleted so that the paragraph clearly stated that "these are significant rights". The third sentence was confusing; deleting it entirely might improve the paragraph. The final sentence emphasized the essence of the paragraph and should therefore be moved to the beginning of the paragraph, introduced by the words "The Committee, in its reading of article 27, requests that States parties ..." for clearer emphasis.

34. Mr. SADI objected to the use of the word "restricted", as he did not believe that the Committee viewed the rights conferred on minorities as restricted rights. If anything, the rights of minorities were additional rights, over and above other individual rights. A more neutral word should be found to replace "restricted". In addition, the word "he" in the first sentence should be replaced by the words "he or she" to make it clear that it referred to both men and women.

35. Mr. HERNDL suggested that the words "nevertheless" and "valuable" should be deleted from the final clause of the first sentence, which would then be amended to read: "these are valid distinct rights".

36. Mr. LALLAH said that the amendments proposed by Mrs. Higgins and Mrs. Chanet would cover the points made by other members. He supported Mr. Herndl's amended version of the end of the first sentence.

37. Mr. NDIAYE supported the amendments put forth by Mrs. Chanet and Mr. Sadi and proposed that the first sentence should be further amended to specify that the rights in question related to particular categories of persons, and precise subject areas (culture, religion and language), that they were protected only when exercised within the minority groups concerned and that they imposed specific obligations on States parties.

The meeting was suspended at 4.30 p.m. and resumed at 4.40 p.m.

38. Mr. LALLAH said that he had incorporated the amendments proposed by Mrs. Chanet, Mr. El-Shafei, Mrs. Higgins, Mr. Ndiaye and Mr. Wennergren, into a revised text of paragraph 8, which read:

> "Notwithstanding the nature and scope of the rights conferred on individuals under article 27 of the Covenant, these rights are important and distinct. These rights relate to particular categories of groups of persons. They concern precise subject areas, that is to say, culture, religion and language. They are protected only when exercised within the minority groups concerned. They impose specific obligations on States parties. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights ensured to one and all under the Covenant. States parties should, therefore, ensure that the exercise of these rights is fully protected and they should indicate in their reports the measures they have adopted to this end."

39. The CHAIRMAN said that if he heard no further comments he would take it that the Committee wished to adopt paragraph 8 as amended.

40. It was so decided.

41. Mrs. CHANET drew attention to the fact that the French version of document CCPR/C/50/CRP.1 did not contain all the amendments adopted previously and asked that a document containing all amendments adopted to date should be circulated to the Committee.

42. The CHAIRMAN said that the Secretariat would produce fully amended documents in all languages.

The meeting rose at 4.45 p.m.